

USSN: 09/932,523

Atty. Docket No.: 2001B078

Response dated February 24, 2004

Replies to Final OA mailed October 1, 2003 and

Advisory Action mailed January 27, 2004

REMARKS/ARGUMENTS

Applicant wishes to thank Examiner for the telephonic interview of January 29, 2004. In view of the interview, Applicant responds to the referenced final Office Action and the referenced Advisory Action as follows.

Correction to the Advisory Action

Applicant believes the Period for Reply indicated on the referenced Advisory Action is in error. The Period for Reply in Box (b) should be checked rather than Box (a). Applicant's position is as follows.

Applicant filed the referenced Rule 116 Amendment on November 21, 2003 as indicated on the Auto-Reply Facsimile Transmission (copy enclosed). Therefore, the filing date of such referenced Rule 116 Amendment was within two (2) months of the mailing date of October 1, 2003 for the referenced final Office Action.

Examiner mailed the referenced Advisory Action on January 27, 2004, which is more than three (3) months after the mailing date of October 1, 2003 for the referenced final Office Action.

In accordance with 706.07(f) of the MPEP, the Period for Reply to the referenced Advisory Action expires on the later of: (1) the mailing date of the referenced Advisory Action (January 27, 2004); or (2) the date set forth in the referenced final Office Action (October 1, 2003). Therefore, in this instance the Period for Reply expires on January 27, 2004, the mailing date of the referenced Advisory Action.

Accordingly, a one (1) month extension of time is due under 37 C.F.R. 1.136(a) if this response is filed on or before February 27, 2004.

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Status of the Claims

Claims 23-36 and 38-39 remain in the application. Claims 1-22 and 37 have been cancelled. Claim 23, and those claims depending therefrom, are amended herein.

In the Advisory Action, Examiner (1) withdrew all of rejections of the claims that were made in the referenced final Office Action, except for the rejection of claims 23-26 and 33-35 under 35 USC 102(b) based on McCarthy, detailed in Paragraph 7 of the final Office Action; and (2) did not enter the amendments to claim 23 that were offered in the referenced Rule 116 Amendment.

Section 102(b) Rejections based on McCarthy

In the Advisory Action, the Examiner first maintained the rejection of claims 23 and 25-26 on the ground that these claims are anticipated by McCarthy's disclosure of polyethylene succinate and polybutylene succinate/adipate as toughening agents. Applicant respectfully disagrees, but in order to better define the invention claim 23, and those claims depending therefrom, are amended herein to delete reference to polyethylene succinate and polybutylene succinate/adipate. In view of this amendment, Applicant submits that Examiner's rejection of these claims over McCarthy is now moot because the claims, as amended, do not recite polyethylene succinate or polybutylene succinate/adipate as toughening agents. Accordingly, Applicant requests the Examiner to withdraw the rejection of claims 23-26 under 35 U.S.C. 102(b) over McCarthy.

Second, the Examiner maintained the rejection of claims 24 and 33-35 on the ground that these claims are anticipated by McCarthy's disclosure of film laminated with paper. In the interview with Examiner, Applicant understood that Examiner interprets McCarthy's film laminated paper (at col. 7, lines 37-55 of McCarthy) as a two layer structure comprising a "film" layer that contains polylactic acid and a "paper" layer that does not contain polylactic acid. That is, McCarthy's film laminated with paper contains polylactic acid in only one layer. Applicant

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therefore submits that Examiner's rejection of these claims is unwarranted because McCarthy does not teach or suggest a core layer comprising polylactic acid in combination with a first skin layer also comprising polylactic acid. Accordingly, Applicant requests the Examiner to withdraw his rejection of claims 24 and 33-35 under 35 U.S.C. 102(b) over McCarthy.

* * *

It is respectfully submitted that the above Amendment and Remarks place this application in order for allowance or in better condition for consideration on appeal. Entry of the Amendment and early allowance of the claims, as amended, are therefore respectfully requested.

Respectfully submitted,

Date: February 24, 2004
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